

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 16, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ARTEM F.,

Plaintiff,

v.

KILOLO KIJAKAZI,
ACTING COMMISSIONER OF
SOCIAL SECURITY,¹

Defendant.

No. 2:20-cv-00310-SMJ

**ORDER GRANTING IN PART
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND
REMANDING FOR ADDITIONAL
PROCEEDINGS**

Before the Court are the parties' cross-motions for summary judgment, ECF Nos. 21, 22. Attorney Lora Stover represents Artem F. (Plaintiff); Special Assistant United States Attorney Thomas Elsberry represents the Commissioner of Social

¹ Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew M. Saul as the defendant in this suit. No further action need be taken to continue this suit. *See* 42 U.S.C. § 405(g).

1 Security (Defendant). The parties have consented to proceed before a magistrate
2 judge. ECF No. 6. After reviewing the administrative record and the briefs filed by
3 the parties, the Court grants in part Plaintiff's Motion for Summary Judgment, denies
4 Defendant's Motion for Summary Judgment, and remands the matter to the
5 Commissioner for additional proceedings pursuant to 42 U.S.C. § 405(g).
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8 JURISDICTION

9 Plaintiff filed applications for Disability Insurance Benefits and Supplemental
10 Security Income on February 13, 2018, alleging disability since October 31, 2013²,
11 due to bipolar disorder and depression. Tr. 100-01. The applications were denied
12 initially and upon reconsideration. Tr. 158-61, 165-70. A hearing was initially
13 scheduled for May 2, 2019, which Plaintiff failed to appear for, and an
14 Administrative Law Judge (ALJ) dismissed the claim on May 10, 2019. Tr. 38-42.
15 A different ALJ vacated the dismissal on June 5, 2019, after receiving word from
16 Plaintiff that he had had a panic attack on the day of the initial hearing. Tr. 36-37.
17 That ALJ held a hearing on October 18, 2019, Tr. 43-73, and issued an unfavorable
18 decision on January 7, 2020, Tr. 15-317-272. Plaintiff requested review by the
19 Appeals Council, which denied Plaintiff's request for review on August 5, 2020. Tr.
20 1-5. The ALJ's January 2020 decision thus became the final decision of the
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27 ² Plaintiff later amended his alleged onset date to October 12, 2016, due to a prior
28 unfavorable ALJ decision on a prior application. Tr. 46-47.

1 Commissioner, which is appealable to the district court pursuant to 42 U.S.C. §
2 405(g). Plaintiff filed this action for judicial review on August 28, 2020. ECF No. 1.

3 4 **STATEMENT OF FACTS**

5 Plaintiff was born in 1983 and was 32 years old as of his amended alleged
6 onset date. Tr. 30. He has a high school education and some college work. Tr. 590.
7 He has worked in telemarketing, assembly, customer service, and caregiving. Tr. 59,
8 470. In 2014, he had a manic episode that resulted in hospitalization. Tr. 51, 861.
9 Since that time, he has continued to receive treatment for his mental health, primarily
10 through medication management, with a few emergency visits for suicidal or other
11 disturbing thoughts. Tr. 51, 404, 457, 462, 470, 877-84.

14 15 **STANDARD OF REVIEW**

16 The ALJ is responsible for determining credibility, resolving conflicts in
17 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
18 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with
19 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,
20 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only
21 if it is not supported by substantial evidence or if it is based on legal error. *Tackett*
22 *v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as
23 being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put
24 another way, substantial evidence is such relevant evidence as a reasonable mind
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1 might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S.
2 389, 401 (1971). If the evidence is susceptible to more than one rational
3 interpretation, the Court may not substitute its judgment for that of the ALJ. *Tackett*,
4 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595,
5 599 (9th Cir. 1999). If substantial evidence supports the administrative findings, or
6 if conflicting evidence supports a finding of either disability or non-disability, the
7 ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230
8 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be
9 set aside if the proper legal standards were not applied in weighing the evidence and
10 making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d
11 432, 433 (9th Cir. 1988).

16 SEQUENTIAL EVALUATION PROCESS

17 The Commissioner has established a five-step sequential evaluation process
18 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a), 416.920(a);
19 *Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the
20 claimant bears the burden of establishing a prima facie case of disability. *Tackett*,
21 180 F.3d at 1098-1099. This burden is met once a claimant establishes that a physical
22 or mental impairment prevents the claimant from engaging in past relevant work. 20
23 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a claimant cannot perform past relevant
24 work, the ALJ proceeds to step five, and the burden shifts to the Commissioner to
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1 show (1) the claimant can make an adjustment to other work; and (2) the claimant
2 can perform specific jobs that exist in the national economy. *Batson v. Commissioner*
3 *of Social Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If a claimant cannot make
4 an adjustment to other work in the national economy, the claimant will be found
5 disabled. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).
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8 ADMINISTRATIVE FINDINGS

9 On January 7, 2020, the ALJ issued a decision finding Plaintiff was not
10 disabled as defined in the Social Security Act.
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12 At step one, the ALJ found Plaintiff had not engaged in substantial gainful
13 activity since the alleged onset date. Tr. 20.
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15 At step two, the ALJ determined Plaintiff had the following severe
16 impairments: bipolar disorder I and delusional disorder. *Id.*
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18 At step three, the ALJ found Plaintiff did not have an impairment or
19 combination of impairments that met or medically equaled the severity of one of the
20 listed impairments. Tr. 21-22.
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22 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found
23 he could perform work at all exertional levels with the following limitations:
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25 Regarding mental abilities, the claimant has the ability to understand,
26 remember or apply information that is simple and routine,
27 commensurate with SVP 2.
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1 Regarding interaction with others, the claimant would work best in an
2 environment in proximity to, but not close cooperation, with co-
3 workers and supervisors, and would work best in an environment away
4 from the public.

5 Regarding the ability to concentrate, persist or maintain pace, the
6 claimant has the ability, with legally required breaks, to focus attention
7 on work activities and stay on task at a sustained rate; complete tasks
8 in a timely manner; sustain an ordinary routine; regularly attend work;
9 and work a full day without needing more than the allotted number or
10 length of rest periods.

11 Regarding the ability to adapt or manage, the claimant would work best
12 in an environment that is routine and predictable, low stress, but does
13 have the ability to respond appropriately, distinguish between
14 acceptable and unacceptable work performance; or be aware of normal
15 hazards and take appropriate precautions.

16 Tr. 21.

17 At step four, the ALJ found Plaintiff was capable of performing his past
18 relevant work as a production assembler. Tr. 25.

19 Alternatively, at step five the ALJ found, considering Plaintiff's age,
20 education, work experience, and residual functional capacity, there were jobs that
21 existed in significant numbers in the national economy that Plaintiff could perform,
22 specifically identifying the representative occupations of office cleaner and collator
23 operator. Tr. 26-27.

24 The ALJ thus concluded Plaintiff was not under a disability within the
25 meaning of the Social Security Act at any time from the alleged onset date through
26 the date of the decision. Tr. 27.

ISSUES

The question presented is whether substantial evidence supports the ALJ's decision denying benefits and, if so, whether that decision is based on proper legal standards.

Plaintiff contends the ALJ erred by (1) improperly evaluating Plaintiff's credibility; and (2) issuing an RFC that did not account for all of Plaintiff's limitations.³

DISCUSSION

1. Plaintiff's Subjective Statements

Plaintiff contends the ALJ erred by improperly rejecting his subjective statements. ECF No. 21 at 12-14.

It is the province of the ALJ to make determinations regarding a claimant's subjective reports. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). However, the ALJ's findings must be supported by specific, cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Once the claimant produces medical evidence of an underlying medical impairment, the ALJ may not discredit testimony as to the severity of an impairment merely because it is unsupported by medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Absent

³ Plaintiff lists other errors in the "Issues" statement of his brief, but the remaining issues were not separately briefed, and are included as results of the ALJ's assessment of Plaintiff's subjective statements and formulation of the RFC.

1 affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's
2 testimony must be "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d 1273,
3 1281 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996). "General
4 findings are insufficient: rather the ALJ must identify what testimony is not credible
5 and what evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834;
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7 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

9 The ALJ concluded Plaintiff's medically determinable impairments could
10 reasonably be expected to cause the alleged symptoms; however, Plaintiff's
11 statements concerning the intensity, persistence and limiting effects of those
12 symptoms were not entirely consistent with the medical evidence and other evidence
13 in the record. Tr. 23.
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16 The ALJ found Plaintiff's allegations to be inconsistent with the objective
17 medical evidence. *Id.* An ALJ may cite inconsistencies between a claimant's
18 testimony and the objective medical evidence in discounting the claimant's symptom
19 statements. *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir.
20 2009). But this cannot be the only reason provided by the ALJ. *See Lester*, 81 F.3d
21 at 834 (the ALJ may not discredit the claimant's testimony as to subjective
22 symptoms merely because it is unsupported by objective evidence). "[A]n ALJ does
23 not provide specific, clear, and convincing reasons for rejecting a claimant's
24 testimony by simply reciting the medical evidence in support of his or her residual
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1 functional capacity determination.” *Brown-Hunter v. Colvin*, 806 F.3d 487, 489 (9th
2 Cir. 2015). The ALJ’s summary of Plaintiff’s treatment records, including the
3 relatively normal mental status exams and the absence of significant episodes of
4 hallucinations or delusions, does not on its own constitute a clear and convincing
5 basis to discount Plaintiff’s testimony of varying levels of depression and
6 motivation.
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9 Defendant argues that the ALJ’s discussion addressed inconsistencies, as well
10 as noted that Plaintiff responded well to treatment and that treatment was effective.
11 ECF No. 22 at 3-6. The Court does not find this re-framing of the ALJ’s discussion
12 to be persuasive, as the only specific rationale offered by the ALJ regarding
13 Plaintiff’s allegations was that they were inconsistent with the objective medical
14 evidence, followed by a discussion of that evidence. Tr. 23. A lack of support from
15 the objective evidence alone is an insufficient basis upon which to discount a
16 claimant’s subjective allegations. Upon remand, the ALJ will reevaluate Plaintiff’s
17 testimony.
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19 **2. Other Issues**

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21 Plaintiff additionally argues that the RFC does not account for all of his mental
22 limitations, and thus the testimony from the vocational expert was not persuasive
23 and the job findings at steps four and five are not accurate. ECF No. 21 at 14.
24 Because the ALJ erred in assessing Plaintiff’s subjective complaints, on remand the
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1 ALJ will reconsider each of the steps of the sequential evaluation process, making
2 additional findings.

3 **CONCLUSION**

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5 Plaintiff argues the decision should be reversed and remanded for the payment
6 of benefits. The Court has the discretion to remand the case for additional evidence
7 and findings or to award benefits. *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir.
8 1996). The Court may award benefits if the record is fully developed and further
9 administrative proceedings would serve no useful purpose. *Id.* Remand is
10 appropriate when additional administrative proceedings could remedy defects.
11 *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th Cir. 1989). Here, the Court finds that
12 further development is necessary and declines to remand for an award of benefits.
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15 The ALJ's RFC determination is not supported by substantial evidence and
16 must be reevaluated. On remand, the ALJ shall reevaluate Plaintiff's subjective
17 complaints and make new findings on each of the five steps in the sequential process,
18 taking into consideration any other evidence or testimony relevant to Plaintiff's
19 disability claim.
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23 Accordingly, **IT IS ORDERED:**

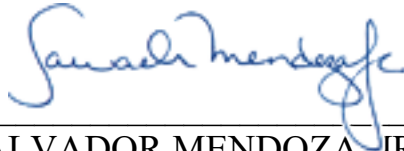
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25 **1. Plaintiff's Motion for Summary Judgment, ECF No. 21, is GRANTED**
26 **IN PART.**
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28 **2. Defendant's Motion for Summary Judgment, ECF No. 22, is DENIED.**

1 3. The matter is **REMANDED** to the Commissioner for additional
2 proceedings consistent with this Order.

3 4. The Clerk's Office is directed to **ENTER JUDGMENT** and **CLOSE**
4 this file.

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6 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
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8 provide copies to all counsel.

9 **DATED** this 16th day of August 2022.

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13 SALVADOR MENDOZA, JR.
14 United States District Judge
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